

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 166

SENATE BILL 1275

AN ACT

REPEALING SECTIONS 37-1125, 37-1129 AND 37-1129.01 THROUGH 37-1129.16, ARIZONA REVISED STATUTES; AMENDING SECTIONS 37-1101, 37-1121, 37-1122, 37-1123, 37-1126, 37-1127 AND 37-1128, ARIZONA REVISED STATUTES; AMENDING TITLE 37, CHAPTER 7, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 37-1129; AMENDING SECTIONS 37-1130, 37-1131, 37-1151 AND 37-1154, ARIZONA REVISED STATUTES; RELATING TO NAVIGABLE WATERCOURSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Legislative intent

3 A. The legislature intends to repeal the provisions of title 37,
4 chapter 7, Arizona Revised Statutes, that were held invalid by the Arizona
5 court of appeals in Defenders of Wildlife, et al. v. Governor Jane Dee Hull,
6 et al., (No. 98-17485), and address certain other concerns raised by the
7 parties to that action.

8 B. Since 1994, the Arizona navigable stream adjudication commission
9 has held more than forty public hearings throughout this state and has
10 gathered thousands of pages of evidence regarding the "navigability" of
11 various watercourses. The legislature intends that the commission may use
12 the evidence produced and gathered to date and shall provide an opportunity
13 for any interested party to submit additional information for consideration
14 by the commission.

15 C. The legislature intends to provide for a full, fair and efficient
16 adjudication and determination of this state's "public trust" and "equal
17 footing" claims to ownership of lands beneath Arizona's watercourses.

18 Sec. 2. Repeal

19 Sections 37-1125, 37-1129 and 37-1129.01 through 37-1129.16, Arizona
20 Revised Statutes, are repealed.

21 Sec. 3. Section 37-1101, Arizona Revised Statutes, is amended to read:

22 37-1101. Definitions

23 In this chapter, unless the context otherwise requires:

24 1. "Arizona navigable stream adjudication commission" or "commission"
25 means the Arizona navigable stream adjudication commission established by
26 section 37-1121.

27 2. "Bed" means the land lying between the ordinary low HIGH watermarks
28 of a watercourse.

29 ~~3. "Determination of nonnavigability in a public proceeding" means a~~
30 ~~determination that a particular watercourse was not navigable before, or as~~
31 ~~of, February 14, 1912 by a final, unappealable decision of a judicial or~~
32 ~~administrative body, including any determination of nonnavigability of:~~

33 ~~(a) Any portion of the Salt river lying between granite reef dam and~~
34 ~~its confluence with the Gila river.~~

35 ~~(b) The Agua Fria river.~~

36 4. 3. "Highway for commerce" means a corridor or conduit within which
37 the exchange of goods, commodities or property or the transportation of
38 persons may be conducted.

39 5. 4. "Man-made water conveyance system" means:

40 (a) An irrigation or drainage canal, lateral canal, ditch or flume.

41 (b) A municipal, industrial, domestic, irrigation or drainage water
42 system, including dams, reservoirs and diversion facilities.

1 (c) A channel or dike that is designed, dedicated and constructed
2 solely for flood control purposes.

3 (d) A hydropower inlet and discharge facility.

4 (e) A canal, lateral canal, ditch or channel for transporting central
5 Arizona project water.

6 ~~6. 5. "Navigable" or "navigable watercourse" means a watercourse, or~~
7 ~~a portion or reach of a watercourse, that was in existence on February 14,~~
8 ~~1912, and at that time was used or was susceptible to being used, in its~~
9 ~~ordinary and natural condition, as a highway for commerce, over which trade~~
10 ~~and travel were or could have been conducted in the customary modes of trade~~
11 ~~and travel on water.~~

12 ~~7. "Ordinary low watermark" means the line on the banks of a~~
13 ~~watercourse created when the water recedes at its regularly recurring lowest~~
14 ~~stage in normal years without reference to unusual droughts.~~

15 6. "ORDINARY HIGH WATERMARK" MEANS THE LINE ON THE BANKS OF A
16 WATERCOURSE ESTABLISHED BY FLUCTUATIONS OF WATER AND INDICATED BY PHYSICAL
17 CHARACTERISTICS, SUCH AS A CLEAR NATURAL LINE IMPRESSED ON THE BANK,
18 SHELVEING, CHANGES IN THE CHARACTER OF THE SOIL, DESTRUCTION OF TERRESTRIAL
19 VEGETATION OR THE PRESENCE OF LITTER AND DEBRIS, OR BY OTHER APPROPRIATE
20 MEANS THAT CONSIDER THE CHARACTERISTICS OF THE SURROUNDING AREAS. ORDINARY
21 HIGH WATERMARK DOES NOT MEAN THE LINE REACHED BY UNUSUAL FLOODS.

22 ~~8. 7. "Public entity" means the United States and its agents, this~~
23 ~~state, a county, city or town, a county flood control district or any other~~
24 ~~entity established under title 48.~~

25 ~~9. 8. "Public trust land" means the portion of the bed of a~~
26 ~~watercourse that is located in this state and that is determined to have been~~
27 ~~a navigable watercourse as of February 14, 1912. Public trust land does not~~
28 ~~include land held by this state pursuant to any other trust.~~

29 ~~10. 9. "Public trust purposes" or "public trust values" means~~
30 ~~commerce, navigation and fishing.~~

31 ~~11. 10. "Riparian area" means a geographically delineated area with~~
32 ~~distinct resource values, that is characterized by deep-rooted plant species~~
33 ~~that depend on having roots in the water table or its capillary zone and that~~
34 ~~occurs within or adjacent to a natural perennial or intermittent stream~~
35 ~~channel or within or adjacent to a lake, pond or marsh bed maintained~~
36 ~~primarily by natural water sources. Riparian area does not include areas in~~
37 ~~or adjacent to ephemeral stream channels, artificially created stockponds,~~
38 ~~man-made storage reservoirs constructed primarily for conservation or~~
39 ~~regulatory storage, municipal and industrial ponds or man-made water or~~
40 ~~effluent transportation, distribution, off-stream storage and collection~~
41 ~~systems.~~

42 ~~12. 11. "Watercourse" means the main body or a portion or reach of~~
43 ~~any lake, river, creek, stream, wash, arroyo, channel or other body of~~
44 ~~water. Watercourse does not include a man-made WATER conveyance system~~
45 ~~described in paragraph 5- 4 of this section, except to the extent that the~~

1 system encompasses lands that were part of a natural watercourse as of
2 February 14, 1912.

3 Sec. 4. Section 37-1121, Arizona Revised Statutes, is amended to read:
4 37-1121. Arizona navigable stream adjudication commission

5 A. The Arizona navigable stream adjudication commission is established
6 through June 30, 2002 2004 as a separate agency and independent of the state
7 land department. The commission consists of five persons, not more than
8 three of whom shall be of the same political party, who are appointed by the
9 governor pursuant to section 38-211. Persons who are appointed to the
10 commission must be well-informed on issues relating to rivers and streams in
11 this state. The commission shall select a presiding officer from among its
12 members.

13 B. Members of the commission are public officers for purposes of title
14 38, chapter 3, article 8 and title 38, chapter 3.1. A person who has
15 advocated for or expressed a desire that a watercourse in this state be
16 determined to have been navigable or nonnavigable may not serve as a
17 commission member. A commission member who is a witness, gives evidence or
18 makes statements of personal knowledge of the characteristics of navigability
19 of a watercourse for the commission's consideration shall not participate as
20 a commission member in proceedings relating to that watercourse. A
21 commission member shall not:

22 1. Have any bias regarding the possible navigability of any
23 watercourse or a portion or reach of a watercourse.

24 2. Own, obtain a significant portion of income from or claim any
25 ownership or possessory interest in lands affected by this chapter.

26 3. Directly or indirectly receive a significant portion of income from
27 a person who claims an ownership or possessory interest in lands affected by
28 this chapter or from a person who obtains a significant portion of income
29 from such lands nor have been employed by such persons within two years
30 before, or be employed by such persons within two years after, the commission
31 member's term of office.

32 C. Funding for the commission and its necessary and reasonable
33 expenses, including contracting for private services, shall be provided from
34 such legislative appropriations as may be necessary to permit the commission
35 to fulfill its responsibilities.

36 D. The governor, on good cause shown, may remove a member for neglect
37 of duty or misconduct or malfeasance in office. On removal, the governor
38 shall file with the secretary of state a complete statement of all charges
39 made against the member, the governor's findings and a complete record of the
40 disciplinary proceedings conducted with respect to the removal.

41 E. Members are eligible to receive compensation pursuant to section
42 38-611 for service on the commission, unless a member who is otherwise
43 employed as a public officer is prohibited from receiving additional
44 compensation.

1 F. The commission shall maintain its principal office at the state
2 capital but may hold meetings or hearings any place in this state. The
3 commission shall meet at least once each calendar quarter, except that if the
4 commission has completed all inquiries and hearings required under this
5 chapter, the commission shall not be required to meet. The presiding officer
6 or a majority of the members may call additional meetings. On termination,
7 the commission shall transmit all of its records to the secretary of state.

8 G. In the event of a vacancy on the commission, the governor may
9 appoint a replacement member pursuant to section 38-211.

10 H. Notwithstanding section 41-192, the attorney general shall not
11 advise or represent the commission.

12 I. For purposes of subsection B of this section, "significant portion
13 of income" means ten per cent or more of gross personal income for a calendar
14 year.

15 Sec. 5. Section 37-1122, Arizona Revised Statutes, is amended to read:

16 37-1122. General powers and duties of the commission

17 A. The commission shall:

18 1. ~~Adopt ADMINISTRATIVE rules and establish procedures and services~~
19 ~~that are necessary or desirable~~ THAT IN ITS DISCRETION IT CONSIDERS TO BE
20 NECESSARY AND PROPER to carry out the provisions and purposes of this
21 chapter.

22 2. Assemble and distribute information to the public relating to the
23 commission's ~~finding and recommendation~~ DETERMINATION of navigability OR
24 NONNAVIGABILITY of any watercourse and the commission's other activities.

25 3. Conduct inquiries or hearings in performing the commission's powers
26 and duties. The commission shall conduct its proceedings informally without
27 adherence to judicial rules of procedure or evidence. The commission shall
28 facilitate participation by persons who are not represented by legal counsel
29 and shall not require a person to file documents or notices in order to be
30 heard and participate in proceedings before the commission.

31 4. Exercise such other powers as may be necessary to fully carry out
32 its responsibilities imposed by this chapter.

33 B. The commission may employ or contract for legal counsel,
34 independent from the attorney general, and other professional and
35 administrative services. LEGAL COUNSEL RETAINED BY THE COMMISSION MAY ADVISE
36 AND REPRESENT THE COMMISSION IN CONNECTION WITH LEGAL MATTERS BEFORE OTHER
37 DEPARTMENTS AND AGENCIES OF THIS STATE AND REPRESENT THE COMMISSION IN
38 LITIGATION CONCERNING THE AFFAIRS OF THE COMMISSION. Contracts for legal and
39 professional services are exempt from section 41-192 and title 41,
40 chapter 23.

41 Sec. 6. Section 37-1123, Arizona Revised Statutes, is amended to read:

42 37-1123. Receiving and compiling evidence and records

43 A. The commission shall receive, review and consider all relevant
44 historical and other evidence presented to the commission by the state land
45 department and by other persons, regarding the navigability or

1 nonnavigability of watercourses in this state as of February 14, 1912,
2 together with associated public trust values, except for evidence with
3 respect to the Colorado river, and, after public hearings conducted pursuant
4 to section 37-1126:

5 1. Based only on evidence of navigability or nonnavigability, make
6 ~~findings and recommendations to the legislature pursuant to section 37-1128~~
7 ~~as to DETERMINE which watercourses and portions and reaches of watercourses~~
8 were not navigable as of February 14, 1912.

9 2. Based only on evidence of navigability or nonnavigability, make
10 ~~findings and recommendations to the legislature pursuant to section 37-1128~~
11 ~~as to DETERMINE which watercourses and portions and reaches of watercourses~~
12 were navigable as of February 14, 1912.

13 3. In a separate, subsequent proceeding pursuant to section 37-1128,
14 subsection H- B, consider evidence of public trust values and then identify
15 and make a public report of any public trust values that are now associated
16 with the navigable watercourses.

17 B. Before receiving, reviewing or considering any evidence pursuant
18 to subsection A of this section for a particular watercourse, the commission
19 shall publish notice once each week for three consecutive weeks in a
20 newspaper of general circulation in each county in which the watercourse is
21 located. The notice shall include:

22 1. A statement of the intent to receive, review and consider evidence.

23 2. An address to which interested parties may submit evidence for the
24 commission's review.

25 3. A date by which evidence must be submitted.

26 4. A general description of the procedures the commission will use to
27 review the evidence.

28 C. Private citizens, clubs, organizations, corporations, partnerships,
29 unincorporated associations, municipal corporations and public entities may
30 present evidence to the commission at a hearing according to commission
31 rules. The submission of evidence by any party pursuant to the commission's
32 notice under subsection B of this section does not preclude that party from
33 submitting additional evidence at any hearing before the commission.

34 D. The state land department shall consult and coordinate its efforts
35 to gather evidence of navigability and public trust values with the
36 department of water resources, the game and fish department, the state parks
37 board and other interested persons and public and private entities. The
38 commission shall consider the information that those persons and entities
39 have compiled regarding the navigability of watercourses.

40 E. After public notice, the commission shall set priorities for
41 investigating and conduct hearings on the navigability of the watercourses
42 in this state. In setting the priorities, the commission shall consider:

43 1. The number and value of parcels of real property that are affected
44 by a state claim of sovereign ownership to the bed of the watercourse.

1 2. The degree of hardship to private parties and political
2 subdivisions due to title uncertainties relating to the bed of the
3 watercourse.

4 3. The significance of the public trust values associated with the
5 watercourse and the degree to which those values are threatened.

6 4. The potential viability of this state's sovereign claims to the
7 watercourse, giving higher priority consideration to more viable claims.

8 F. A person who is aggrieved by the undetermined navigability status
9 of a watercourse may petition the commission to modify the priority set under
10 subsection E of this section and grant expedited consideration for a
11 particular watercourse or ~~portion or reach of a watercourse~~. The commission
12 shall grant the petition if justified by the factors listed in subsection E
13 of this section.

14 G. No judicial action seeking a determination of navigability of a
15 watercourse, to establish or obtain ownership of land within the bed and
16 banks of a watercourse or to determine any public trust values associated
17 with a watercourse may be commenced, continued or completed unless the
18 ~~legislature has found that the watercourse was navigable or nonnavigable~~
19 COMMISSION HAS MADE A FINAL DETERMINATION WITH RESPECT TO THE WATERCOURSE
20 pursuant to section 37-1128. This subsection does not preclude the
21 department from seeking a temporary restraining order or injunctive relief
22 at any time to prevent loss or damage to public trust resources.

23 H. Notwithstanding subsection G of this section, any condemnation
24 action by this state or a political subdivision of this state may proceed to
25 trial and conclusion, including the payment of compensation, regardless of
26 the potential claim of title by this state based on the navigability of the
27 watercourse. In any action commenced or continued pursuant to this
28 subsection, the court shall not consider or decide the navigability of the
29 watercourse. Any judgment in any action commenced or continued pursuant to
30 this subsection shall be subject to a potential claim of title by this state
31 based on the navigability of the watercourse.

32 Sec. 7. Section 37-1126, Arizona Revised Statutes, is amended to read:
33 37-1126. Hearings; notice

34 A. ~~After the commission completes the initial classification of any~~
35 ~~watercourse or portion or reach of a watercourse under section 37-1125, The~~
36 ~~commission shall schedule public hearings to receive additional evidence and~~
37 ~~testimony relating to navigability or nonnavigability of any such reach or~~
38 ~~portion EACH WATERCOURSE, and, after IF the commission finds a watercourse~~
39 ~~is navigable, the commission shall schedule public hearings to identify and~~
40 ~~make a public report of any public trust values associated with the~~
41 ~~watercourse. The hearings shall be held at the commission's office or, in the~~
42 ~~case of a hearing concerning a watercourse located principally outside of~~
43 ~~Maricopa county, at the county seat of the county in which the predominant~~
44 ~~portion of the particular watercourse is located. The commission may~~

1 schedule additional hearings at other locations at the commission's
2 discretion.

3 B. At least thirty days before any public hearing under this section,
4 the commission shall cause notice of the hearing to be published in two
5 newspapers, one of statewide circulation and another of general circulation
6 in the county where the hearing is to be held. In addition, the commission
7 shall mail notice of the hearing to any person who has previously requested
8 notice of hearings in writing from the commission.

9 Sec. 8. Section 37-1127, Arizona Revised Statutes, is amended to read:

10 37-1127. Boundary agreements; negotiations; recording; effect

11 A. At any time before a final ~~judicial~~ determination UNDER SECTION
12 37-1128 as to whether a watercourse or a portion or reach of a watercourse
13 was navigable as of February 14, 1912, the commissioner may negotiate with
14 any person or public entity having or claiming an interest in any land
15 affected by this state's claim of sovereign ownership due to navigability for
16 the purpose of reaching a boundary or exchange agreement.

17 B. At least thirty days before submitting a proposed boundary or
18 exchange agreement to the board of appeals for approval under subsection C
19 of this section, the commissioner shall provide written notice of the
20 proposed action and an opportunity to comment to any person who has
21 previously requested written notice of actions under this section. The
22 commissioner shall provide contemporaneous written notice of the final
23 decision to any person who filed a comment.

24 C. The board of appeals established under section 37-213 must approve
25 each boundary or exchange agreement. In considering whether to approve a
26 boundary or exchange agreement, the board shall consider whether the
27 agreement is prudent and consistent with the public trust and the
28 Constitution of Arizona.

29 D. The board of appeals may allow an exchange only if both of the
30 following conditions are met:

31 1. The land being transferred by the state is not of material use for
32 trust purposes.

33 2. The land being acquired by the state is of material use for trust
34 purposes and has an appraised value equal to or greater than the value of the
35 land being transferred by the state.

36 E. Lands that are transferred to this state in an approved boundary
37 or exchange agreement become public trust lands.

38 F. An approved boundary or exchange agreement is binding on this state
39 and other parties to the agreement but is not admissible as evidence and may
40 not be cited as precedent in any judicial or administrative proceeding
41 involving the navigability of any watercourse, ~~portion or reach~~.

42 G. A boundary or exchange agreement shall be recorded in the office
43 of the county recorder of each county in which all or part of the affected
44 land is located.

45 Sec. 9. Section 37-1128, Arizona Revised Statutes, is amended to read:

1 37-1128. Determination of navigability

2 A. After the commission completes the public hearing with respect to
3 a watercourse, the commission shall again review all available evidence and
4 render its finding and recommendation DETERMINATION as to whether the
5 particular watercourse, or any portion or reach of the watercourse, was
6 navigable as of February 14, 1912. IF THE PREPONDERANCE OF THE EVIDENCE
7 ESTABLISHES THAT THE WATERCOURSE WAS NAVIGABLE, THE COMMISSION SHALL ISSUE
8 ITS DETERMINATION CONFIRMING THAT THE WATERCOURSE WAS NAVIGABLE. IF THE
9 PREPONDERANCE OF THE EVIDENCE FAILS TO ESTABLISH THAT THE WATERCOURSE WAS
10 NAVIGABLE, THE COMMISSION SHALL ISSUE ITS DETERMINATION CONFIRMING THAT THE
11 WATERCOURSE WAS NONNAVIGABLE.

12 ~~B. If any determination of nonnavigability in a public proceeding~~
13 ~~exists for a watercourse or a portion or reach of a watercourse, it is~~
14 ~~presumed that the entire watercourse was nonnavigable as of February 14,~~
15 ~~1912, and the commission shall find and recommend that it was nonnavigable~~
16 ~~unless there is clear and convincing evidence that the watercourse was~~
17 ~~navigable.~~

18 ~~C. The commission shall find and recommend that a watercourse was~~
19 ~~nonnavigable if, as of February 14, 1912, the watercourse either:~~

20 ~~1. Was not used or susceptible of being used for both commercial trade~~
21 ~~and travel.~~

22 ~~2. Flowed only in direct response to precipitation and was dry at all~~
23 ~~other times.~~

24 ~~D. Unless there is clear and convincing evidence that a watercourse~~
25 ~~was navigable, it is presumed, and the commission shall find and recommend,~~
26 ~~that the watercourse was nonnavigable if, with respect to the watercourse as~~
27 ~~of February 14, 1912, any of the following applied:~~

28 ~~1. No sustained trade and travel occurred both upstream and downstream~~
29 ~~in the watercourse.~~

30 ~~2. No profitable commercial enterprise was conducted by using the~~
31 ~~watercourse for trade and travel.~~

32 ~~3. Vessels customarily used for commerce on navigable watercourses in~~
33 ~~1912, such as keelboats, steamboats or powered barges, were not used on the~~
34 ~~watercourse.~~

35 ~~4. Diversions were made from the watercourse to irrigate and reclaim~~
36 ~~land by persons who made entries under the desert land act of 1877, as~~
37 ~~amended (43 United States Code sections 321 through 339), any other federal~~
38 ~~act or to provide water to lands that are included in a federal reclamation~~
39 ~~project or an Indian reservation that would have been inconsistent with or~~
40 ~~impediments to navigation.~~

41 ~~5. Any boating or fishing was for recreational and not commercial~~
42 ~~purposes.~~

43 ~~6. Any flotation of logs or other material that occurred or was~~
44 ~~possible on the watercourse was not and could not have been regularly~~
45 ~~conducted for commercial purposes.~~

1 ~~7. There were bridges, fords, dikes, man-made water conveyance systems~~
2 ~~or other structures constructed in or across the watercourse that would have~~
3 ~~been inconsistent with or impediments to navigation.~~

4 ~~8. Transportation in proximity to the watercourse was customarily~~
5 ~~accomplished by methods other than by boat.~~

6 ~~9. The United States did not regulate the watercourse under the rivers~~
7 ~~and harbors act of 1899 (33 United States Code sections 401 through 467e).~~

8 ~~E. In finding whether a watercourse was navigable, the commission~~
9 ~~shall not consider:~~

10 ~~1. Waters that had been appropriated for beneficial uses on or before~~
11 ~~February 14, 1912 as being within the ordinary and natural condition of the~~
12 ~~watercourse.~~

13 ~~2. The use of ferries to cross a watercourse.~~

14 ~~3. Fishing from the banks of a watercourse.~~

15 ~~4. Uses of the watercourse under flood conditions.~~

16 ~~F. In finding whether a watercourse was navigable, the commission~~
17 ~~shall consider the existence of dams and diversions of water and the impact~~
18 ~~of other human uses that existed or occurred at the time of statehood as part~~
19 ~~of the ordinary and natural condition of the watercourse.~~

20 ~~G. Subject to the specific standard of proof stated in subsection D~~
21 ~~of this section, if the evidence presented by the state land department or~~
22 ~~by any other person claiming that the watercourse was navigable does not~~
23 ~~establish that the watercourse was navigable, the commission shall issue its~~
24 ~~recommendation finding that the watercourse was nonnavigable.~~

25 ~~H. B. With respect to those watercourses or portions or reaches of~~
26 ~~watercourses that the commission finds DETERMINES were navigable, the~~
27 ~~commission shall, in a separate, subsequent proceeding, identify and make a~~
28 ~~public report of any public trust values associated with the navigable~~
29 ~~watercourse. or portion or reach of the watercourse. These findings of~~
30 ~~nonnavigability or navigability and identification of any public trust values~~
31 ~~shall be in writing and shall be supported with sufficient documentation and~~
32 ~~detail to confirm the rationale and basis for the decision. The commission's~~
33 ~~action pursuant to this section is not a final administrative decision~~
34 ~~subject to judicial review pursuant to title 12, chapter 7, article 6.~~

35 ~~I. The commission shall report its findings and recommendation to the~~
36 ~~president of the senate and the speaker of the house of representatives. The~~
37 ~~president and the speaker shall provide for legislative hearings, and if the~~
38 ~~legislature finds that the watercourse was:~~

39 ~~1. Nonnavigable, the legislature shall enact legislation ratifying the~~
40 ~~commission's findings and recommendation and disclaiming title as provided~~
41 ~~by section 37-1130.~~

42 ~~2. Navigable, the legislature shall enact legislation to authorize the~~
43 ~~state land department to claim the land in the bed of the watercourse and to~~
44 ~~authorize the department to file an action to quiet title to the land.~~

1 ~~J. In an action to quiet title to land in the bed of a watercourse~~
2 ~~brought pursuant to subsection I, paragraph 2 of this section both of the~~
3 ~~following apply:~~

4 ~~1. The commission's recommendation and the legislative finding shall~~
5 ~~not be used to support the state's claim of title.~~

6 ~~2. The court may make a determination of any public trust values~~
7 ~~associated with the lands if title is quieted in the state.~~

8 C. THE COMMISSION SHALL MAKE ITS DETERMINATIONS UNDER SUBSECTIONS A
9 AND B OF THIS SECTION IN WRITING WITH SUFFICIENT DOCUMENTATION AND DETAIL TO
10 CONFIRM THE RATIONALE AND BASIS FOR THE DETERMINATION. THE DETERMINATIONS
11 CONSTITUTE FINAL ADMINISTRATIVE DETERMINATIONS AND ARE NOT SUBJECT TO TITLE
12 41, CHAPTER 6, ARTICLE 10.

13 D. THE COMMISSION SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF ANY
14 WATERCOURSE THAT IT DETERMINES TO BE NAVIGABLE OR NONNAVIGABLE UNDER
15 SUBSECTION A OF THIS SECTION. WITHIN NINETY DAYS AFTER RECEIVING NOTICE THAT
16 A WATERCOURSE IS:

17 1. NAVIGABLE, THE DEPARTMENT SHALL SEND NOTICE OF THAT DETERMINATION
18 TO EACH RECORD OWNER OF, AND EACH PERSON OR ENTITY THAT HAS AN INTEREST OF
19 RECORD IN, ANY PROPERTY THAT MAY BE AFFECTED BY THE DETERMINATION AND TO EACH
20 PERSON OR ENTITY THAT HAS REQUESTED NOTIFICATION OF ANY DETERMINATION OF
21 NAVIGABILITY. THE DEPARTMENT SHALL INCLUDE A STATEMENT OF WHETHER THE
22 DEPARTMENT INTENDS TO SEEK JUDICIAL REVIEW OF THE COMMISSION'S DETERMINATION.
23 ANY TIME AFTER THE DATE OF THE NOTICE UNDER THIS PARAGRAPH, THE RECORD TITLE
24 OWNER OR LESSEE OF ANY AFFECTED PROPERTY MAY PETITION THE DEPARTMENT IN
25 WRITING TO DISCLAIM, RELEASE, RELINQUISH OR DISPOSE OF THE PROPERTY FROM
26 PUBLIC TRUST LAND STATUS AS NO LONGER NECESSARY OR MATERIALLY USEFUL FOR THE
27 PURPOSES OF THE TRUST.

28 2. NONNAVIGABLE, THE DEPARTMENT SHALL SEND NOTICE OF THAT
29 DETERMINATION TO EACH PERSON OR ENTITY THAT HAS REQUESTED NOTIFICATION OF ANY
30 DETERMINATION OF NONNAVIGABILITY. THE DEPARTMENT SHALL INCLUDE A STATEMENT
31 OF WHETHER THE DEPARTMENT INTENDS TO SEEK JUDICIAL REVIEW OF THE COMMISSION'S
32 DETERMINATION.

33 E. AFTER THE TIME FOR JUDICIAL REVIEW OF THE COMMISSION'S
34 DETERMINATION WITH RESPECT TO ANY WATERCOURSE HAS EXPIRED, AS PROVIDED IN
35 SECTION 37-1129, THE COMMISSION SHALL CAUSE A RECORD OF ITS DETERMINATION TO
36 BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF EACH COUNTY IN WHICH ANY
37 PART OF THE WATERCOURSE AFFECTED BY THE DETERMINATION IS LOCATED.

38 Sec. 10. Title 37, chapter 7, article 2, Arizona Revised Statutes, is
39 amended by adding a new section 37-1129, to read:

40 37-1129. Judicial review

41 A. WITHIN NINETY DAYS AFTER THE DEPARTMENT ISSUES A NOTICE UNDER
42 EITHER SECTION 37-1128, SUBSECTION D, PARAGRAPH 1 OR 2, THE STATE LAND
43 COMMISSIONER OR ANY PERSON WHO IS AGGRIEVED BY THE COMMISSION'S DETERMINATION
44 MAY SEEK JUDICIAL REVIEW IN SUPERIOR COURT IN THE COUNTY IN WHICH ALL OR PART
45 OF ANY PROPERTY THAT IS DIRECTLY AFFECTED BY THE DETERMINATION IS LOCATED.

1 B. EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, JUDICIAL REVIEW SHALL
2 BE CONDUCTED PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

3 C. IF SEPARATE ACTIONS ARE FILED UNDER THIS SECTION WITH RESPECT TO
4 THE SAME WATERCOURSE OR ADJACENT OR PROXIMATE WATERCOURSES, ON MOTION BY ANY
5 PARTY TO ANY SUCH ACTION OR ON ITS OWN INITIATIVE, THE COURT MAY:

6 1. ORDER A JOINT HEARING OR TRIAL OF ANY MATTER IN THE ACTIONS.

7 2. ORDER ALL OF THE ACTIONS PENDING IN ANY COURT TO BE CONSOLIDATED.

8 3. ISSUE SUCH ORDERS CONCERNING PROCEEDINGS IN THE ACTIONS AS MAY TEND
9 TO AVOID UNNECESSARY COSTS OR DELAY OR AS MAY BE NECESSARY TO AVOID
10 INCONSISTENT RESULTS.

11 Sec. 11. Section 37-1130, Arizona Revised Statutes, is amended to
12 read:

13 37-1130. Title to bed of nonnavigable watercourse;
14 appropriation of waters for public trust values

15 A. ~~The enactment of legislation finding~~ SUBJECT TO JUDICIAL REVIEW
16 UNDER SECTION 37-1129, THE COMMISSION'S DETERMINATION that a watercourse;
17 ~~portion or reach~~ is nonnavigable constitutes a waiver, relinquishment and
18 disclaimer of this state's right, title or interest in the bed of the
19 watercourse based on its navigability.

20 B. This state may obtain any water that is necessary to maintain and
21 protect public trust values that are identified by the commission pursuant
22 to section 37-1128, subsection H- B only by complying with the requirements
23 of title 45.

24 Sec. 12. Section 37-1131, Arizona Revised Statutes, is amended to
25 read:

26 37-1131. Notice to landowners; quiet title action

27 A. If the ~~legislature enacts legislation finding~~ COMMISSION DETERMINES
28 a watercourse to be navigable as provided in section 37-1128, the state land
29 department shall do the following before it files ANY quiet title actions
30 ACTION REGARDING PUBLIC TRUST PROPERTY BENEATH OR ADJACENT TO THE
31 WATERCOURSE:

32 1. Collect information and perform land surveys that are necessary to
33 determine where the department believes the exact location of the boundaries
34 of the bed of the watercourse are located. The bed of the watercourse to
35 which the state claim applies is the bed of the watercourse existing on the
36 date of the ~~legislature's finding~~ COMMISSION'S DETERMINATION, unless clear
37 and convincing THE PREPONDERANCE OF THE evidence establishes a different
38 location. Before making this determination, the department shall provide
39 public notice and any opportunity for comment by the advocate for private
40 property rights established pursuant to title 41, chapter 8, article 1.1 and
41 any other person.

42 2. Compile a complete description of each parcel of land lying wholly
43 or partially in the bed of the watercourse, including record title ownership
44 by any person, and a complete title search of each parcel to show how and
45 when the lands were first conveyed in apparent violation of the public trust.

1 3. If the land was conveyed in apparent violation of the public trust
2 by an agency of the United States, bring an action against the United States
3 for damages and prosecute the action to final judgment. Any damages
4 collected shall be placed in the riparian trust fund established by section
5 37-1156.

6 B. Within thirty days after compiling the parcel information pursuant
7 to subsection A, paragraph 2 of this section the department shall notify each
8 record owner or lessee of property that is located in the bed of the
9 navigable watercourse and each person and entity that have an interest of
10 record in the property of the ~~finding by the legislature~~ COMMISSION'S
11 DETERMINATION and that, by virtue of the decision DETERMINATION, all or a
12 portion of the property will be claimed as public trust land of this state
13 in a quiet title action. The notice shall also provide information prepared
14 by the advocate for private property rights explaining the person's rights
15 and any services available from the advocate.

16 C. The ~~state land~~ department shall not commence an action to quiet
17 title to land under this article ~~without legislative authorization~~ UNTIL THE
18 COMMISSION HAS ISSUED A FINAL DETERMINATION REGARDING THE NAVIGABILITY OF THE
19 WATERCOURSE pursuant to section 37-1128 AND THAT DETERMINATION IS SUBJECT TO
20 NO FURTHER JUDICIAL REVIEW PURSUANT TO SECTION 37-1129.

21 D. VENUE FOR ANY ACTION TO QUIET TITLE UNDER THIS SECTION IS PROPER
22 ONLY IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE AFFECTED LANDS ARE
23 LOCATED, BUT THE COURT MAY GRANT OR DENY REQUESTS FOR CHANGE OF VENUE
24 PURSUANT TO TITLE 12, CHAPTER 4, ARTICLE 1.

25 E. THE DEPARTMENT SHALL JOIN AS PARTIES TO ANY ACTION TO QUIET TITLE
26 UNDER THIS SECTION EACH RECORD OWNER OF, AND EACH PERSON OR ENTITY THAT HAS
27 AN INTEREST OF RECORD IN, ANY PROPERTY IN THE COUNTY THAT MAY BE AFFECTED BY
28 THIS STATE'S CLAIM TO OWNERSHIP OF THE BED OF THE AFFECTED WATERCOURSE, BUT
29 THIS REQUIREMENT DOES NOT CONSTITUTE GROUNDS FOR DISMISSING THE ACTION IF THE
30 PERSONS OR ENTITIES NOT JOINED ARE NOT SUBJECT TO THE JURISDICTION OF THE
31 COURTS OF THIS STATE.

32 Sec. 13. Section 37-1151, Arizona Revised Statutes, is amended to
33 read:

34 37-1151. Petition to release public trust status

35 A. In responding to a petition filed by a record title owner or lessee
36 PURSUANT TO SECTION 37-1128, SUBSECTION D, PARAGRAPH 1 the department shall
37 consider the extent to which the property that has been confirmed to the
38 state's ownership in a quiet title action, either because of its nature or
39 because of changes, is no longer of material use for protecting public trust
40 values. If the department concludes that the property is not of material use
41 for protecting public trust values, the department shall consider the extent
42 to which a release of the trust is appropriate in light of the public benefit
43 to be derived from alternate uses, and the equitable interests or hardships
44 of the record title holder or lessee, including each of the following:

- 1 1. The year in which the property was acquired by the record owner or
2 lessee.
- 3 2. The entity or person from whom the property was acquired by the
4 record owner or lessee.
- 5 3. The manner in which the record owner or lessee acquired the
6 property.
- 7 4. The purchase price or lease terms paid by the record owner or
8 lessee.
- 9 5. The amount of property taxes paid each year since the record owner
10 or lessee acquired the property.
- 11 6. The profit or benefit derived from the property by the record
12 owner.
- 13 7. The extent to which the record owner on the date of acquisition
14 knew or should have known that the property was potentially trust land.
- 15 8. All improvements made to the property since the record owner or
16 lessee acquired the property.
- 17 9. The public trust values identified by the commission.
- 18 10. Whether any improvements on the property impair, obstruct, promote
19 or destroy the value of the watercourse for public trust values.
- 20 11. The existing uses of the property, its reasonable highest and best
21 use and whether such uses impair, obstruct, promote or destroy the value of
22 the watercourse for public trust values.
- 23 12. Whether the physical condition of the watercourse has materially
24 changed since February 14, 1912 adversely affecting the watercourse's
25 capability of being navigated, including changes due to construction of dams,
26 reservoirs, dikes, levees, canals and ditches that were constructed for water
27 conservation or flood control purposes by public entities, municipal
28 corporations or the United States.
- 29 13. Any diminution in value to the record owner's or lessee's
30 contiguous property caused by this state's ownership.
- 31 14. The degree of effect of continuation of the current use or any
32 proposed change in use of the property on public trust values.
- 33 15. The impact of continuation of the current use or any proposed
34 change in use of the property on the public trust values.
- 35 16. The impact of continuation of the current use or any proposed
36 change in use of the property when examined cumulatively in conjunction with
37 existing authorized impediments to full use of the public trust values.
- 38 17. The impact of continuation of the current use or any proposed
39 change in use of the property on the public trust values if those values are
40 considered with respect to the primary purpose to which the property is now
41 suited.
- 42 18. The degree to which continuation of the current use or any proposed
43 change in use requires that broad public uses be set aside in favor of more
44 limited and private uses.

1 B. At least thirty days before issuing a decision that land may be
2 released from the public trust under this section the department shall
3 provide written notice of the proposed action and an opportunity to comment
4 to any person who has previously requested written notice of actions under
5 this section. The department shall provide contemporaneous written notice
6 of the final decision to any person who filed a comment.

7 Sec. 14. Section 37-1154, Arizona Revised Statutes, is amended to
8 read:

9 37-1154. Public improvements in beds of navigable watercourses;
10 definition

11 A. A determination that a watercourse ~~or a portion or reach of a~~
12 watercourse is navigable does not affect the right of a public entity to own,
13 operate, maintain or repair a public improvement reasonably constructed in
14 the bed of the watercourse under the public entity's powers if the
15 improvement was constructed before the determination that the watercourse,
16 ~~portion or reach~~ is navigable and does not materially impair the public
17 trust. The public entity is considered to have obtained this state's consent
18 to construct the public improvement and is not liable to pay compensation to
19 this state for the land on which the public improvement is constructed if the
20 improvement does not materially impair, obstruct or destroy the function of
21 the watercourse for public trust purposes.

22 B. If the commissioner determines that the public improvement
23 described in subsection A of this section does not, or will not if
24 appropriate conditions are followed, materially impair the public trust uses,
25 the department may require the public entity to obtain a permit for the
26 improvement pursuant to section 37-1153 but shall not assess any fee for
27 issuing the permit.

28 C. At least thirty days before issuing a decision under subsection D
29 or E of this section the department shall provide written notice of the
30 proposed action and an opportunity to comment to any person who has
31 previously requested notice of actions under this section. The department
32 shall provide contemporaneous written notice of the final decision to any
33 person who filed a comment.

34 D. If the commissioner determines that the public improvement
35 described in subsection A of this section destroys the function of the
36 watercourse for public trust purposes and is not in furtherance of the public
37 trust status of the land, the public entity may petition the department for
38 release of public trust status pursuant to section 37-1151. In evaluating
39 the petition, the department shall consider, in addition to the factors
40 prescribed by section 37-1151, whether constructing the public improvement
41 was undertaken pursuant to the public entity's authority and whether the
42 public improvement continues to serve a public purpose.

43 E. If the commissioner determines that a release is appropriate under
44 subsection D of this section, the public entity may purchase this state's
45 interest in the land without a public auction by paying an amount to be

1 determined by the department pursuant to section 37-1152 directly to this
2 state pursuant to section 9-401, subsection A, section 11-251, paragraph 45
3 or section 48-3603, subsection C, paragraph 2, as applicable. No cause of
4 action or claim for reimbursement accrues for the benefit of any public
5 entity that exercises its right to purchase this state's interest pursuant
6 to this subsection.

7 F. For purposes of this section, "public improvement" includes any
8 facility established, constructed or maintained by a public entity pursuant
9 to law and those works described in section 37-1101, paragraph 5- 4.

APPROVED BY THE GOVERNOR APRIL 20, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2001.

Passed the House April 11, 2001,

by the following vote: 35 Ayes,

20 Nays, 5 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate March 15, 2001,

by the following vote: 21 Ayes,

8 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1275

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

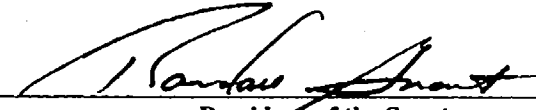
Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 17, 20 01,

by the following vote: 20 Ayes,

9 Nays, 1 Not Voting

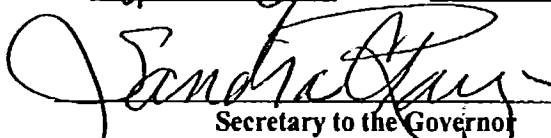

President of the Senate
Norma Lowe
Ass^t Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17 day of April, 20 01,

at 2:00 o'clock P M.


Secretary to the Governor

APPROVED THIS 20th day of

April, 20 01,

at 11:12 o'clock A M.

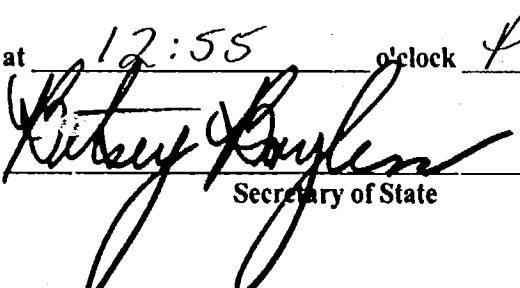

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of April, 20 01,

at 12:55 o'clock P M.


Secretary of State

S.B. 1275